

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SHARON E. KOBEL,

Plaintiff,

vs.

**COMPLAINT**

Civil Action No.

UNITED STATES OF AMERICA,

Defendants.

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Plaintiff, above named, by her attorneys LIPSITZ GREEN SCIME CAMBRIA LLP, for her Complaint against the defendant, alleges:

**FIRST CLAIM FOR RELIEF**

1. Plaintiff is a citizen of the United States and resides in the County of Niagara, in the State of New York.
2. The defendant is the UNITED STATES OF AMERICA.
3. This action arises under the Federal Tort Claims Act of 1948, 62 Stat. 982, 28 USC §§ 1346(b), 2671 et seq.
4. Venue is placed in this judicial district pursuant to 28 USC §1391.
5. Upon information and belief, at all times mentioned, the defendant UNITED STATES OF AMERICA, by and through the Department of Immigration and Customs Enforcement, was the owner of a certain motor vehicle bearing New York State license plate number HBA2160.

6. Upon information and belief, at all times mentioned, the aforesaid motor vehicle was operated by Gerald John Gibas, an agent, servant, and/or employee of the defendant, United States of America, Department of Immigration and Customs Enforcement.

7. Upon information and belief, at all times hereinafter mentioned, the United States of America, Department of Immigration and Customs Enforcement employee operated the vehicle alleged to have been owned by defendant, UNITED STATES OF AMERICA, with the permission and consent of the defendant-owner.

8. Upon information and belief, at all times hereinafter mentioned Gerald John Gibas was employed by the defendant, UNITED STATES OF AMERICA and was acting within the scope of his employment.

9. Upon information and belief, on or about the 7th day of February, 2022, the plaintiff SHARON E. KOBEL, was operating her vehicle on Interstate 190, at a point near Milepost marker 7.6, a public highway located within the City of Buffalo, County of Erie and State of New York, when the motor vehicle owned by the UNITED STATES OF AMERICA and operated by an agent, servant and/or employee of defendant, UNITED STATES OF AMERICA, failed to remain attentive, and came into contact with the rear of the vehicle operated by the plaintiff, SHARON E. KOBEL.

10. Upon information and belief, the alleged incident, hereinbefore described, was caused as a result of the negligent, careless, reckless and unlawful conduct on the part of the defendant, UNITED STATES OF AMERICA, and/or the agents, servants and/or employees of said defendant.

11. Upon information and belief, and without limitation, the alleged incident, hereinbefore described, was caused as a result of the negligent, careless, reckless and unlawful conduct on the part of the defendant, UNITED STATES OF AMERICA, its agents, servants and/or employees, as follows:

- in failing to keep a safe distance from the rear of plaintiff's vehicle;
- in operating the vehicle at an unreasonable rate of speed under the circumstances and conditions then and there prevailing;
- in failing and omitting to keep a proper lookout;
- in failing and omitting to have the vehicle under control;
- in failing and omitting to take heed of the road and traffic conditions then and there existing;
- in failing and omitting to timely, reasonably and properly utilize the facilities at hand in order to avoid the accident;
- in failing and omitting to divert the vehicle into an alternate path of travel in order to avoid the accident;
- in operating the vehicle in disregard of the safety of the plaintiff;
- in failing and omitting to observe the applicable rules and regulations of the road at the time and place of the occurrence;
- in operating the vehicle in such a manner so that it unreasonably endangered the plaintiff;
- in driving the vehicle in such a manner so that it unreasonably interfered with the free and proper use of a public highway;
- in failing and omitting to be reasonably alert;
- in failing and omitting to adequately, sufficiently and/or properly brake and/or stop the vehicle in a timely manner;
- in failing and omitting to apply his brakes;
- in operating the brakes of the vehicle in such a careless and negligent manner so as to fail to slow down and/or stop the vehicle;
- in failing and omitting to make proper use of the vehicle's brakes, lights, steering, horn and other safety devices;



- in failing and omitting to exercise that degree of care that a reasonable and prudent person would have used in similar circumstances; and
- in failing and omitting to avoid the incident, which in the exercise of reasonable care, could and should have been avoided.

12. Upon information and belief, defendant, UNITED STATES OF AMERICA, is liable for the actions of Gerald John Gibas, based on theory of respondeat superior.

13. Upon information and belief, defendant, UNITED STATES OF AMERICA, is liable for the actions of Gerald John Gibas, pursuant to New York Vehicle and Traffic Law §388.

14. As a result of the alleged incident, the plaintiff, SHARON E. KOBEL, sustained bodily injuries and was painfully and seriously injured, and some of the injuries may result in permanent defects; was rendered sick, sore, lame and disabled; sustained pain and suffering and shock to her nerves and nervous system; was caused to and did seek medical aid and attention; was caused to be confined to hospital, bed and home; was caused to and did incur great medical expense and may incur further medical expense; was caused to be incapacitated from her usual activities and employment, and may be further incapacitated.

15. Upon information and belief, the plaintiff, SHARON E. KOBEL, has sustained a serious injury as defined by Section 5102 of the New York State Insurance Law, and has suffered basic economic loss as well as other economic loss as special damages.

16. On or about November 27, 2023, plaintiff, SHARON E. KOBEL, filed a claim for Administrative Settlement with the Department of Immigration and Customs Enforcement as required by 28 USC §2675 in the sum of ONE MILLION DOLLARS and 00/100 (\$1,000,000.00) DOLLARS. Six months has passed since the claim was filed without a denial having been received, which shall then be deemed a denial of the claim. (28 USC §2675).

17. Upon information and belief, as a result of the foregoing, the plaintiff, SHARON E. KOBEL, has been damaged by the defendant UNITED STATES OF AMERICA, in the sum of ONE MILLION DOLLARS and 00/100 (\$1,000,000.00) DOLLARS.

**WHEREFORE**, the plaintiff demands judgment, against the defendant, UNITED STATES OF AMERICA, in the First Claim for Relief, in the sum of ONE MILLION and 00/100 (\$1,000,000.00) DOLLARS and for such other, further or different relief as the Court may deem just and proper, together with the costs and disbursements of the action.

DATED: June 25, 2024  
Buffalo, New York

**LIPSITZ GREEN SCIME CAMBRIA LLP**

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